

REMARKS

Applicants offer the following remarks to accompany the above amendments.

Status of the Claims

Claims 1-37 have been cancelled. New claims 38-57 have been added.

Discussion of Prior Art Cited in Previous Final Office Action With Respect to New Claims

Applicants' new claim 38 relates to a method for providing a plurality of broadcast elements to a user device based on a user profile, which indicates a preference of a user associated with the user profile. Notably, the broadcast elements are provided automatically and are not based on a selection from a user device. The broadcast elements include at least one song broadcast element and at least one advertising broadcast element. Applicants' new claim 48 relates to a server having functionality similar to that described in claim 38, and new claim 54 relates to a computer-usable medium containing thereon computer-readable instructions for performing the method described in claim 38. Applicants' dependent claims 39-47, 49-53, and 55-57 further describe aspects of Applicants' invention. Applicants' new claims clarify that Applicants' invention relates to automatically, without manual or programmatic selection from the user device, generating a broadcast stream of broadcast elements of at least two different types, specifically a song and an advertisement. Each type of broadcast element is selected based on the user profile associated with the user.

Applicants urge that U.S. Patent No. 6,161,142 to Wolfe et al. (hereinafter "Wolfe"), extensively relied upon by the Patent Office in the Final Office Action mailed April 30, 2008, at a minimum fails to teach or suggest automatic selection of different types of broadcast elements based on a user profile. For example, Wolfe fails to disclose or suggest selection of a song broadcast element based on a user profile, let alone selection of a song broadcast element based on a user profile in conjunction with an advertising broadcast element based on a user profile. The Patent Office has relied on the following passage to suggest Wolfe discloses selection of songs based on user profiles:

"The specific musical material and advertisements transmitted may vary as a function of the information contained in the dossiers of the subscribers" (Wolfe, col. 3, ll. 43-47, emphasis added).

However, Applicants urge that the cited passage merely means that the overall music catalog may vary as the tastes of the subscribers vary. Applicants note that the passage is clear that it refers to dossiers (plural) of many subscribers. The teaching that the overall music selection available to be selected by the user may vary depending on the preference of the subscribers in no way suggests individually selecting songs for a specific subscriber and transmitting the song to the subscriber. Moreover, Applicants note that the Patent Office's interpretation of the passage would conflict with repeated passages in Wolfe that explicitly state that the user selects the music, including:

"[T]he program initiates a search for the specific piece of music or other data content the subscriber has requested" (Wolfe, col. 6, ll. 28-30, emphasis added); and

"The subscriber selects the content which he or she desires to receive, and the content is placed in a queue" (Wolfe, col. 7, ll. 46 and 47, emphasis added).

Further, nothing in Wolfe discloses automatically selecting a plurality of broadcast elements, without selection from the user device. Wolfe discloses that music can be selected by a user, as discussed previously, and suggests that a program can be downloaded onto the computer to automatically select music, in essence merely automating the user's manual selection (Wolfe, col. 7, ll. 63-67). Nothing in Wolfe discloses that such computer-based automatic selection is based on a user profile, nor does it disclose automatic selection that occurs without selection from the user device. Consequently, Applicants urge that Wolfe does not anticipate Applicants' claimed invention, and that Applicants' independent claims 38, 48, and 54 are therefore allowable, and that dependent claims 39-47, 49-53, and 55-57 are likewise allowable, for at least the reason that they are dependent claims depending directly from allowable independent claims.

Conclusion

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicants' representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,
WITHROW & TERRANOVA, P.L.L.C.

By:



Eric P. Jensen
Registration No. 37,647
100 Regency Forest Drive, Suite 160
Cary, NC 27518
Telephone: (919) 238-2300

Date: July 30, 2008
Attorney Docket: 1116-119